

MAJOR CALHOUN,)
)
Plaintiff,)
)
v.) No. 4:07CV1284 CDP
)
MISSOURI DEPARTMENT OF)
CORRECTIONS, et al.,)
)
Defendants.)

This matter is before the Court for review of plaintiff's amended complaint under 28 U.S.C. § 1915(e). Under 28 U.S.C. § 1915(e), the Court is required to dismiss the amended complaint if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. After reviewing the amended complaint, the Court finds that it survives initial review and should not be dismissed at this time. As a result, the Court will order the Clerk to serve process or cause process to issue as to the named defendants.

The Court notes that there is one “John Doe” defendant named in the complaint. In general, fictitious parties may not be named as defendants in a civil action. Phelps v. United States, 15 F.3d 735, 739 (8th Cir. 1994). An action may proceed against a party whose name is unknown, however, if the complaint makes

sufficiently specific allegations to permit the identity of the party to be ascertained after reasonable discovery. Munz v. Parr, 758 F.2d 1254, 1257 (8th Cir. 1985). The Court will allow the case to go forward as to the named John Doe defendant because there are sufficient allegations to permit his identity to be ascertained through discovery.

Previously, the Court found that the original complaint survived review as to defendants Tracy Dunn and Unknown Hawkins. These defendants have not been named in the amended complaint. As a result, the Court will dismiss these defendants from this case. In re Wireless Telephone Federal Cost Recovery Fees Litigation, 396 F.3d 922, 928 (8th Cir. 2005) (the filing of an amended complaint replaces the original complaint, and claims that are not realleged are deemed abandoned).

Accordingly,


IT IS HEREBY ORDERED that defendants Dunn and Hawkins are **DISMISSED** from this action without prejudice.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue as to defendants Don Roper (Superintendent, Potosi Correctional Center), Unknown Harper (Correctional Officer, PCC), Unknown Hatcher (same), Unknown Webber (same), Unknown Allen (Correctional Case Worker, PCC), and Ian Wallace (Assistant Superintendent, PCC).

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), these defendants shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

An Order of Partial Dismissal shall be filed with this Memorandum and Order.

Dated this 22nd day of January, 2008.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE